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MUNDY'S EX'RS v. GARLAND et al.

Nov. 16, 1911.

[72 S. E. 713.]

Judgment (§ 180*)—Summary Proceeding—Motion—Action on Contract.—A contract authorized plaintiffs, as executors of defendants' vendor under a contract for the sale of real estate, to resell the land, which defendants had previously agreed to purchase at the price of \$9,500, and obligated defendants, if on such resale the property should bring less than such sum, to pay the difference, with interest and costs and expenses incurred in the resale. Held, that such contract was one by which, on the happening of certain things, defendants bound themselves to pay money, the amount of which, after the happening of the contingency provided for, was a mere matter of calculation, and hence plaintiffs were entitled to a judgment on motion, under Code 1904, § 3211, providing that any person, entitled to recover money by action on any contract, may, on motion before any court which would have jurisdiction in an action otherwise than under section 3215 of the Code, obtain judgment for such money.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 342; Dec. Dig. § 180.* 10 Va.-W. Va. Enc. Dig. 127, 128.]

Error to Circuit Court, Botetourt County.

Proceedings by notice and motion by James Mundy's executors against J. L. Garland and others. On defendants' motion the proceeding was dismissed without prejudice, and plaintiffs bring error. Reversed and remanded.

C. M. Lunsford and *E. V. Barley*, for the plaintiffs in error.
Benjamin Haden, for the defendants in error.

CARDWELL, J., absent.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.